Supreme Court, U.S.
FILED

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No.:

In the Supreme Court of the United States

MICHAEL LEWIS GAGLIARDI,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

PETITION FOR A WRIT OF CERTIORARI

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42 pp

QUESTION PRESENTED FOR REVIEW

1. Were the Petitioner's rights under the Sixth and Fourteenth Amendments to the United States Constitution violated when an Alabama state court accepted his plea of guilt without evidence that a sworn information or indictment was ever entered against him?

PARTIES TO THE PROCEEDINGS BELOW

The only parties to the proceedings below are the Petitioner-Appellant, Michael Lewis Gagliardi, and the State of Alabama.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CITED AUTHORITIES iv

CITATIONS TO OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS AT ISSUE 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 6

I. THE DECISION OF THE ALABAMA COURT OF CRIMINAL APPEALS CONFLICTS WITH FEDERAL CONSTITUTIONAL LAW 6

CONCLUSION 9

TABLE OF CITED AUTHORITIES

CASES — PAGE(S)

Albrecht v. United States, 273 U.S. 1 (1927) 7

Argersinger v. Hamlin, 407 U.S. 25 (1972) 6

Butler v. Alabama, 130 Ala. 127, 30 So. 338 (1901) 6

Cole v. Arkansas, 333 U.S. 196 (1948) 7

Ford v. Alabama, 612 So. 2d 1317 (Ala. Crim. App. 1992) 7

Gannett Company, Inc. v. DePasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979) 6

Miles v. Alabama, 94 Ala. 106, 11 So. 403 (1889) 6

In re Oliver, 333 U.S. 257 (1948) 7

Powell v. Alabama, 287 U.S. 45 (1932) 6

Ross v. Alabama, 529 So. 2d 1074 (Ala. Crim. App. 1988) 7, 8

Smith v. O'Grady, 312 U.S. 329 (1941) 6

State v. Gagliardi, 747 So. 2d 366 (Ala. Crim. App. 1999) 1, 4, 5, 8

STATUTES	PAGE(S)
U.S. Const. amend. VI	2, 6
U.S. Const. amend. XIV	2, 7
28 U.S.C § 1257(a)	2
Ala. R. Crim. P. 32	1, 3

CITATIONS TO OPINIONS BELOW

The decision of the Supreme Court of Alabama, dated April 27, 2001, denying Petitioner's motion for a Writ of Certiorari to the Alabama Court of Criminal Appeals is unreported and is included herein at App. 1.

The decision of the Alabama Court of Criminal Appeals, dated January 12, 2001, affirming the decision of Alabama District Court, Tenth Judicial Circuit, Jefferson County, is unreported and is included herein at App. 2-7.

The decision of the Alabama District Court, Jefferson County, dated April 19, 2000, denying Petitioner's motion for relief pursuant to Ala. R. Crim. P. 32, is unreported and is included herein at App. 8-10.

The decision of the Alabama Court of Criminal Appeals is reported at State v. Gagliardi, 747 So. 2d 366, 367 (Ala. Crim. App. 1999) and is included herein at App. 11-14.

The decision of the Alabama Circuit Court, Jefferson County, dated December 18, 1998, granting Petitioner's motion for relief pursuant to Ala. R. Crim. P. 32, is unreported. The transcript of proceedings and the order issued from the bench is included herein at App. 15-25.

STATEMENT OF JURISDICTION

The judgment of the Alabama Court of Criminal Appeals which is sought to be reviewed was entered on January 12, 2001. The order of the Alabama Supreme Court denying to grant a writ of certiorari was entered on April 27, 2001. This petition is filed within ninety days of April 27, 2001.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AT ISSUE

This case involves the Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . .

U.S. Const. amend. VI.

This case also involves Section I of the Fourteenth Amendment to the United States Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of law.

U.S. Const. amend. XIV.

STATEMENT OF THE CASE

In 1991, Mr. Gagliardi was denied his constitutional right to be properly informed of the charges against him when he was convicted of robbery in the second degree by the District Court of Jefferson County. When Mr. Gagliardi was arrested in 1991, the District Attorney failed to file an Information or Indictment informing Mr. Gagliardi of the charges against

him. Despite the fact that the District Court was without jurisdiction because Mr. Gagliardi had not been formally charged with any crime, as required by both the United States and Alabama constitutions, the court accepted Mr. Gagliardi's plea of guilt.

It is fundamental that a criminal defendant enjoys a fundamental constitutional right to be formally informed of the charges levied against him. Indeed, a formal presentation of charges is a prerequisite to the trial court's jurisdiction over the defendant. In this case, the State readily admitted in the court below that there is no direct evidence that an Information was filed in this case. Moreover, despite the clear mandate from the Alabama legislature and the Supreme Court of Alabama that criminal files be permanently maintained, there is no Information or Indictment in the Clerk's file for this case. Therefore, it is clear that as a result of the District Attorney's failure to formally present Mr. Gagliardi with the charges brought against him, the District Court was without jurisdiction to render judgment and impose sentence upon Mr. Gagliardi. Thus, his conviction must be declared null and void.

On March 15, 1991, Mr. Gagliardi appeared in the District Court of Jefferson County before Judge Jack Montgomery to enter a plea of guilty to second degree robbery. Without any evidence that an Information or Indictment was filed with the Court, Judge Montgomery accepted Mr. Gagliardi's guilty plea and sentenced him to 15 years, 2 years to actually be served in a jail or institution, the remainder suspended with probation for two years. See App. at 2.

Mr. Gagliardi never appealed from the judgment of conviction. See App. at 2. On May 21, 1998, however, Mr.

Gagliardi filed a petition for post-conviction relief pursuant to Alabama Rule of Criminal Procedure 32 in the Circuit Court of Jefferson County for relief from a 1996 conviction. In that petition, he claimed that the 1991 conviction was not valid for want of jurisdiction and could not be used to enhance the sentence for his 1996 conviction. The State argued that because the District Attorney's office had a copy of a blank Information in its file, *a fortiori*, one was filed with the Clerk of the District Court. See App. at 18. Indeed, the contrary is true. There is no direct evidence in the Clerk's file or in the transcript of Mr. Gagliardi's plea of guilt that an Information was filed in this case.

On December 18, 1998, the Jefferson County Circuit Court held that because the State could not make an affirmative showing that an Information was filed, Mr. Gagliardi's 1991 conviction was not valid. See App. at 24. The court later held that Mr. Gagliardi's 1996 sentence was improperly enhanced and therefore invalid. The State appealed. On appeal, th Alabama Court of Criminal Appeals reversed the decision below, holding that because Mr. Gagliardi's 1998 post-conviction relief petition was a collateral attack on the validity of his 1991 conviction, the petition should have been filed in the District Court of Jefferson County, Alabama, the court of original jurisdiction. See App. at 14; State v. Gagliardi, 747 So. 2d 366, 367 (Ala. Crim. App. 1999).

In accordance with this Court's directions, on December 30, 1999, Mr. Gagliardi filed in the District Court of Jefferson County, Alabama, a Petition for Relief from Conviction or Sentence (the "Rule 32 Petition") challenging his 1991 conviction on the ground that he was not properly informed of the charges brought against him by the District Attorney. After hearing oral argument, and reviewing supplemental

briefing, the District Court denied Mr. Gagliardi's Rule 32 petition.[1] See App. at 8-10. The State appealed, and the Alabama Court of Criminal Appeals affirmed the District Court's decision. See App. at 2-8.

In its written opinion, the Court of Criminal Appeals expressly points out that a certified Information does not exist in the court's file for Mr. Gagliardi's case. See App. at 5, ¶ 2. The court also expressly acknowledges that there is no reference to a certified Information in the colloquy between the trial court and Mr. Gagliardi at the time that his plea was taken. See App. at 6, ¶ 3. Instead, the Court of Criminal Appeals relies on language located in a pre-printed, boilerplate *Explanation of Rights and Plea of Guilt* form to support the State's contention that an Information was filed. See id. In addition, the Court of Criminal Appeals cites to the District Attorney's alleged retention of an *unsigned, uncertified* Information as further support that a sworn Information was filed against Mr. Gagliardi in this case. See id.

The Court of Criminal Appeals's reliance upon a boilerplate form and the slipshod practice of the District Attorney not to keep a photocopy of the constitutionally mandated Information is clearly misguided. A criminal defendant's right to a formal presentation of charges is fundamental. Moreover, it cannot be waived. Thus, despite the fact that Mr. Gagliardi appeared before the court to enter a plea of guilt, the District Attorney was not relieved of his duty to file a signed, sworn Information. Accordingly, because no Information was ever filed in this case, the District Court of Jefferson County was without jurisdiction to impose

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[1] The oral argument was not recorded.

sentence upon Mr. Gagliardi. The sentence imposed must be declared null and void.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE ALABAMA COURT OF CRIMINAL APPEALS CONFLICTS WITH FEDERAL CONSTITUTIONAL LAW

A criminal defendant's right to be apprised of the charges being brought against him is one of the most basic in a civilized society. In order to ensure due process of law, the constitutions of the United States and of the State of Alabama require the State to formally inform criminal defendants of the charges brought against them. See Smith v. O'Grady, 312 U.S. 329 (1941); Butler v. Alabama, 130 Ala. 127, 30 So. 338 (1901); Miles v. Alabama, 94 Ala. 106, 11 So. 403 (1889).

The Sixth Amendment to the United States Constitution mandates that criminal defendants are guaranteed the right to be informed of the nature and cause of the accusation made against them. See U.S. Const. amend. VI; Gannett Company, Inc. v. DePasquale, 443 U.S. 368, 379, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979). This provision of the Sixth Amendment has been made applicable to the States by reason of the Fourteenth Amendment. See Argersinger v. Hamlin, 407 U.S. 25, 27 (1972). Indeed, "the necessity of due notice and an opportunity of being heard is described as among the 'immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.'" Powell v. Alabama, 287 U.S. 45, 68 (1932) (quoting Holden v. Hardy, 169 U.S. 366, 389 (1898)). In addition, the due process clause of the Fourteenth Amendment itself provides the accused with the "clearly established"

right to notice of the charges and a "chance to be heard in a trial of the issues raised by that charge." See Cole v. Arkansas, 333 U.S. 196, 201 (1948); see also U.S. Const. amend. XIV; In re Oliver, 333 U.S. 257, 273 (1948).

These principles apply with equal weight where a defendant pleads guilty to a felony. Indeed, this Court has cogently stated that "[a] person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court. Albrecht v. United States, 273 U.S. 1, 8 (1927) (emphasis added). See also Ford v. Alabama, 612 So.2d 1317, 1321 (Ala. Crim. App. 1992) (holding that the requirement for a formal accusation "by Indictment, or Information, or complaint supported by oath is essential to complete jurisdiction [over the person], and cannot be waived."); Ross v. Alabama, 529 So. 2d 1074, 1078 (Ala. Crim. App. 1988) ("the constitutional requisition of Indictments . . . is so imbued with the public concern for due and proper administration of the law that no individual may waive it") (quoting Kennedy v. State, 39 Ala. App. 676, 690, 107 So. 2d 913, 926).

In this case, there is no indication that Mr. Gagliardi was properly apprised of the charges against him when he entered his plea. There is no evidence that the district attorney ever signed and swore out an Information, much less that one was ever filed with the District Court of Jefferson County. As the lower court noted, nowhere in the transcript of Petitioner's plea is there any mention of an Information or Indictment. See App. at 5, ¶ 2. Nor is there any record on the docket sheet of any Information having been filed with the Clerk of the District Court. See 22-23. The District Attorney, the District Court and the Court of Criminal Appeals rely only on boilerplate forms and a self-serving affidavit from the District

Attorney to support Petitioner's conviction. See App. at 3. Such evidence simply does not meet the strict statutory and constitutional requirements necessary to obtain jurisdiction and validly accept a guilty plea. See Ross 529 So. 2d at 1078.

Indeed, it is conspicuous that the District Attorney's affidavit does not state that an Information was filed in this case. Rather, the District Attorney states only that it is general practice to file Informations when felony pleas are taken. See App. at 4-5. This is not a case, however, where an Information was filed and then lost or misplaced -- *there is simply no indication on the clerk's docketing page that one was ever filed.* See App. at 22-23. The State's citation to an unsigned, unsworn, unfiled Information does not meet the constitutional burden that it must carry before a citizen can be convicted of an alleged crime. In fact, it stretches the imagination to conceive that the Alabama District Attorney's office does not keep photocopies of the Informations it files in court, but keeps unsigned, unsworn forms instead.

The State's failure to formally inform Mr. Gagliardi of the charges against him renders Mr. Gagliardi's 1991 conviction and sentence void. Therefore, the Court of Criminal Appeals' opinion should be overturned. Indeed, the Circuit Court of Jefferson County already determined, albeit without jurisdiction, that the 1991 conviction is invalid. See App. at 24. And the Court of Criminal Appeals did not disagree with that determination upon first reviewing this case. See App. at 11-14; State v. Gagliardi, 747 So. 2d 366, 367 (Ala. Crim. App. 1999).

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully submits that the judgment of conviction is due to be declared null and void. The Petitioner respectfully requests this Court to grant a writ of certiorari to the Alabama Court of Criminal Appeals, and, upon review of the matters herein, to reverse the decision of the Court of Criminal Appeals and hold that the District Court of Jefferson County was without jurisdiction to issue judgment and conviction upon the Petitioner and therefore declare the conviction null and void.

Respectfully submitted,

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